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REMARKS

The present amendment is responsive to the Office Action mailed in the above-referenced case on September 09, 2005. Claims 1-20 are presented for examination. In the Office Action the Examiner has rejected claims 1-20 under 35 U.S.C. 103(a) as being unpatentable over Newhall (US 5,682,479) hereinafter Newhall, in view of Khouri et al. (U.S. 6,072,806), hereinafter Khouri.

Applicant has carefully noted and reviewed the rejections, the references, and the Examiner's statements. Applicant herein provides arguments to more particularly point out the subject matter regarded as inventive, distinguishing unarguably over the references of Newhall and Khouri as cited and applied by the Examiner.

Regarding claims 1, 7 and 13, the Examiner states that Newhall substantially teaches applicant's invention, but fails to teach that port status is monitored on a continuing or periodic basis for active or failed status, or that a status table listing an alternative destination for each port along with active or failure status. The Examiner relies upon the newly presented reference of Khouri to teach the ability of monitoring port status on a continual or periodic basis for active or failed status (col. 6, lines 17-34 and figs 2, 3A and 3B). The Examiner states that it would have been obvious to one skilled in the art to adapt this to Newhall's system to maintain quality of service within the system.

Applicant respectfully disagrees that Khouri teaches monitoring port status on a continual or periodic basis for active or failed status. The portion of Khouri, relied upon by the Examiner specifically recites "link status database 68 maintains the current configuration regarding the message version associated with each communication link", and further that "version controller 70 is capable of monitoring the message version of incoming signals received from a communication link to ensure that the messages conform to the message version assigned to the communication link".

Applicant argues that monitoring of the message version is certainly not akin to monitoring port status on a continual or periodic basis for active or failed status, as taught

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in applicant's specification and specifically recited in applicant's claims. The type of message, or message version, refers to the protocol, data format or a particular set of messages. Existing systems typically require the same type of message for all connected devices. The invention of Khouri attempts to solve the problem that, in the case where the system administrator may desire additional features or functionality provided by a different type of message for a few devices, but does not need the added features in the remaining devices, the system administrator must purchase and install a new type of message for all devices, even though the new version is not required by all of the devices.

To this end Khouri provides a message-based communication system capable of communicating multiple types of messages between different devices in a communication system. Khouri illustrates in Fig. 2 an embodiment of a server (32) coupled to a pair of nodes (34, 36) in which multiple communication links (42 – 66) are provided between the server and each node.

Applicant argues that Khouri teaches monitoring the communication links, not the ports as in applicant's invention. Further, Khouri teaches monitoring the links for message version, not active or failed status as in applicant's invention. Monitoring communication links for message version clearly has nothing to do with monitoring ports for active or failed status. Further, with reference to Fig. 6, applicant's specification teaches a table showing ports and associated line items for the first line card of Fig. 5. Three columns are shown in the table of Fig. 6, a first column indicating each port on the card, a second column with an entry for whether the port is active or faulty (port status), and a third column with a redirect tag number. Conversely, Khouri teaches, with reference to Fig. 3A and 3B, a link status table which does not maintain active or failed status of the ports, nor does the table maintain alternate redirect routes in the case of a failed port.

The rather common practice of Examiners in rejecting claims because prior art teaches alternative inventions that might accomplish the same or similar purpose is completely disingenuous, and should be discouraged. To create a *prima facie* rejection, the actual elements of the claimed invention must be shown in the art, and in this case the combined art clearly and unarguably fails to do so. Khouri clearly teaches an alternative

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invention for solving an alternative problem from that which is solved by applicant's invention, and therefore there would be no motivation for combining monitoring of communication links for message version with the system of Newhall to produce applicant's invention.

Newhall and Khouri fail to teach monitoring ports in the network as claimed and maintaining a status table including alternative destinations for ports and active or failed status. Applicant believes that claim 1, as argued above, is patentable over the prior art provided by the Examiner, either singly or in combination. Claims 2-6 are patentable on their own merits, or at least as dependent upon a patentable claim.

Regarding claims 7 and 13, applicant believes the arguments provided above regarding Newhall/Khouri, easily serve to argue the patentability of these independent claims as they hold limitations included in said argument. Claims 8-12 and 14-20 are patentable on their own merits, or at least as dependent from a patentable claim.

As all of the claims, as argued, are clearly shown to be patentable over the combined art of Newhall and Khouri, applicant respectfully requests that the rejections be withdrawn and that the case be passed quickly to issue. If any fees are due beyond fees paid with this amendment, authorization is made to deduct those fees from deposit account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully Submitted,
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